

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

STEVE ELLIOT, individually,
GLENDA ELLIOT, individually,
HUNTER ELLIOT, NATHAN ELLIOT,
and MEGAN ELLIOT, by and through
their next friend, STEVE ELLIOT,

Plaintiffs,

v

Case No. 04-74817

JOSHUA LATOR and SCOTT TAYLOR,

Defendants.

SETTLEMENT HEARING

BEFORE THE HONORABLE GERALD E. ROSEN
United States District Judge
733 US Courthouse & Federal Building
231 Lafayette Boulevard West
Detroit, Michigan
Wednesday, October 10, 2007

APPEARANCES:

CHRISTOPHER J. TRAINOR
Law Office of Trainor & Toombs
6557 Highland Road
Waterford, MI 48237
On behalf of the Plaintiffs.

JAMES T. FARRELL
Michigan Department of Attorney General
P.O. Box 30736
Lansing, MI 48909
On behalf of the Defendants.

To obtain a certified transcript:
Carol S. Sapala, FCRR, RMR
313.961-7552

C O N T E N T S

IDENTIFICATION

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Certificate of Court Reporter

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E X H I B I T S

IDENTIFICATION

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None Marked

Settlement Hearing

1 Detroit, Michigan

2 October 10, 2007

3 12:15 p.m.

4 THE LAW CLERK: Calling case number
5 04-74817 Elliott versus Lator.

6 THE COURT: May I have appearances,
7 please.

8 MR. FARRELL: Jim Farrell, on behalf of
9 the defendants.

10 MR. TRAINOR: Afternoon, Your Honor.
11 Christopher Trainor on behalf of the Elliots, Steve
12 and Glenda.

13 THE COURT: If counsel and the parties
14 would approach the podium, please.

15 The record should reflect that this matter
16 was set for a Final Pretrial Conference today.

17 The Court had the opportunity to meet with
18 counsel in chambers and after some discussion, has
19 been advised by the parties we have a settlement
20 which the parties wish to place on the record now.

21 Mr. Farrell, I'm going to ask you to place
22 the general ramifications of the settlement on the
23 record.

24 I'm going to ask the Elliots to -- I'm
25 going to ask the Elliots to listen carefully and

Elliott versus Lator, et al 04-74817

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1 then Mr. Trainor will have some questions for you,
2 okay? Okay, Mr. Farrell.

3 MR. FARRELL: Thank you, Your Honor.

4 Your Honor, the parties have agreed,
5 through their attorneys, that in exchange for
6 payment of \$45,000 from the State to plaintiffs,
7 that the plaintiff's will stipulate to dismissal of
8 the existing claim with prejudice without cost to
9 any parties; and they promise not to take an appeal
10 or seek any additional or extra relief in the United
11 States Court of Appeals in connection with this
12 case.

13 Further, that they will provide the State
14 and the defendants and any member of the Michigan
15 Department of State Police with a general release of
16 all claims for any claims that have been brought or
17 could have been brought in this action arising out
18 of the incident that occurred in the execution of a
19 search warrant at their residence in February 2004.

20 THE COURT: Mr. Trainor?

21 MR. TRAINOR: Could you please state your
22 name for the record.

23 THE COURT: Let me administer the oath,
24 please.

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1 (Whereupon the plaintiffs
2 were then sworn)

3 THE COURT: Thank you.

4 MR. TRAINOR: Could you please state your
5 name for the record.

6 PLAINTIFF STEVEN ELLIOT: Steven Robert
7 Elliot.

8 PLAINTIFF GLENDA ELLIOT: Glenda Elliot.

9 MR. TRAINOR: Mr. and Mrs. Elliot, you
10 also have some children that had damages in this
11 case also. Are you aware of that?

12 PLAINTIFF STEVEN ELLIOT: Yes.

13 PLAINTIFF GLENDA ELLIOT: Yes.

14 MR. TRAINOR: This case arises out of the
15 illegal search of their home.

16 THE COURT: The names of your children who
17 are parties to the case represented by you folks?
18 Names and ages.

19 PLAINTIFF GLENDA ELLIOT: Hunter Alexander
20 Elliot, he's now seven and Nathan William Elliot,
21 he's now six and Megan Marie Elliot, she's now six.

22 MR. TRAINOR: They, along with yourselves,
23 were involved in this illegal search of your home
24 back in 2004. Correct?

25 PLAINTIFF STEVEN ELLIOT: Yes.

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1 PLAINTIFF GLENDA ELLIOT: Correct.

2 MR. TRAINOR: You brought this lawsuit to
3 seek damages for this illegal search; isn't that
4 true?

5 PLAINTIFF STEVEN ELLIOT: Yes.

6 PLAINTIFF GLENDA ELLIOT: Yes.

7 MR. TRAINOR: You've heard what Mr.
8 Farrell said, we're settling this case for \$45,000.

9 Do you understand that?

10 PLAINTIFF STEVEN ELLIOT: Yes.

11 PLAINTIFF GLENDA ELLIOT: Yes.

12 MR. TRAINOR: I've advised you I wanted to
13 go in front of the jury here, see if we can get more
14 money. Isn't that true?

15 PLAINTIFF STEVEN ELLIOT: Yes.

16 PLAINTIFF GLENDA ELLIOT: Yes.

17 MR. TRAINOR: I also explained to you if
18 we went to a jury trial, you could get less than 45.
19 Isn't that true?

20 PLAINTIFF STEVEN ELLIOT: Yeah.

21 PLAINTIFF GLENDA ELLIOT: Yes.

22 MR. TRAINOR: Also zero, too, correct?

23 PLAINTIFF STEVEN ELLIOT: Yes.

24 PLAINTIFF GLENDA ELLIOT: Yes.

25 MR. TRAINOR: Or a big verdict.

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1 And Mr. Farrell of the State of Michigan
2 could appeal it and this could take another year or
3 two to sort itself out.

4 Are you aware of that, also?

5 PLAINTIFF GLENDA ELLIOT: Yes.

6 PLAINTIFF STEVEN ELLIOT: Yeah.

7 MR. TRAINOR: And based upon all that,
8 you've decided you want to settle the case for 45,
9 correct?

10 PLAINTIFF STEVEN ELLIOT: Yes.

11 PLAINTIFF GLENDA ELLIOT: Yes.

12 MR. TRAINOR: Are you satisfied with the
13 services of my law firm?

14 PLAINTIFF STEVEN ELLIOT: Yes.

15 PLAINTIFF GLENDA ELLIOT: Yes.

16 MR. TRAINOR: Now pursuant to a Fee
17 Agreement with my law firm, you are going to pay me
18 40 percent contingency plus costs. Is that true?

19 PLAINTIFF STEVEN ELLIOT: Yes.

20 PLAINTIFF GLENDA ELLIOT: Yes.

21 MR. TRAINOR: We did the rough math in the
22 hallway and it looks as though I'm going to receive
23 21,000 of the 45,000. You're going to receive
24 24,000.

25 However, I agreed to change that and say

Settlement Hearing

1 you can have 25,000 and I'll take \$20,000.

2 Is that fair?

3 PLAINTIFF STEVEN ELLIOT: Yes.

4 PLAINTIFF GLENDA ELLIOT: Yes.

5 THE COURT: I'd also ask you -- for the
6 record, I think you should indicate approximately
7 how much your actual costs were.

8 And that will come from the \$20,000?

9 MR. TRAINOR: Right. The costs will come
10 from my portion of the proceeds.

11 And the costs in this case I indicated to
12 you were roughly around \$5,000, possibly \$6,000.

13 PLAINTIFF STEVEN ELLIOT: Yes.

14 PLAINTIFF GLENDA ELLIOT: Yes.

15 MR. TRAINOR: Okay.

16 THE COURT: You understand that you
17 folks -- I want to be clear on this.

18 You folks are going to receive \$25,000
19 net, but Mr. Trainor will receive \$20,000 of which
20 he will pay the costs his law firm's already
21 incurred.

22 PLAINTIFF STEVEN ELLIOT: Yes.

23 PLAINTIFF GLENDA ELLIOT: Yes.

24 MR. TRAINOR: You owe no other fees or
25 costs for anybody, correct?

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1 PLAINTIF F GLEND A ELLIOT: Yes.

2 PLAINTIF F STEVEN ELLIOT: Yes.

3 MR. TRAINOR: If my costs turn out to be
4 eight or \$9,000, you don't owe that either.

5 All you're paying is \$20,000 to me,
6 correct?

7 PLAINTIF F STEVEN ELLIOT: Yes.

8 PLAINTIF F GLEND A ELLIOT: Yes.

9 MR. TRAINOR: Are you happy with that
10 amount you're receiving?

11 PLAINTIF F GLEND A ELLIOT: Yes.

12 PLAINTIF F STEVEN ELLIOT: Yes.

13 MR. TRAINOR: You should also be aware
14 there is a dispute over whether an attorney can
15 charge more than 33 and a third percent on certain
16 cases.

17 And in civil rights cases, especially
18 because of their complexity, the work performed in
19 this case, also because I took an appeal up to the
20 Sixth Circuit in the case, I did all that extra
21 work, that I think 40 percent is more fair.

22 You guys agreed to that condition.

23 PLAINTIF F STEVEN ELLIOT: Yes.

24 PLAINTIF F GLEND A ELLIOT: Yes.

25 MR. TRAINOR: Are you aware of that?

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1 Anything else you'd like to say to the judge?

2 PLAINTIFF GLENDA ELLIOT: No, thank you.

3 PLAINTIFF STEVEN ELLIOT: No.

4 MR. FARRELL: I'd like to note on the
5 record despite Mr. Trainor's statements, that the
6 State does not admit to any liability.

7 The State or the defendants do not admit
8 this was an illegal search or the warrant was
9 illegal.

10 There are disputed issues of fact and law
11 in this matter. And that payment of the \$45,000 is
12 done solely to buy peace and to end this litigation
13 at this time.

14 THE COURT: I think everybody understands
15 that we leave the parties as they were.

16 There have been -- because it's a
17 settlement, there are no final adjudications.

18 As Mr. Farrell indicated, both sides had
19 we gone through the process, had the right to appeal
20 any rulings by this Court. Okay.

21 MR. FARRELL: Thank you, Your Honor.

22 THE COURT: Anything further?

23 MR. FARRELL: No, Your Honor.

24 THE COURT: Do either of you folks have
25 any questions of the Court?

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1 THE PLAINTIFF: No. I am glad it's over.

2 THE COURT: Thank you all very much for

3 coming in.

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5 (This hearing concluded at 12:15 p.m.)

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CERTIFICATE OF COURT REPORTER

I certify that the foregoing is a correct transcript from reported proceedings in the above-entitled matter.

s/Carol S. Sapala, FCRR, RMR March 10, 2009